

To amend title XIX of the Social Security Act to assist severely disabled individuals to attain or maintain their maximum potential for independence and capacity to participate in community and family life.

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IN THE HOUSE OF REPRESENTATIVES

JUNE 27, 1985

Mr. FLORIO (for himself, Mr. COELHO, Mr. MORRISON of Connecticut, Mr. GALLO, and Mr. TOERICELLI) introduced the following bill; which was referred to the Committee on Energy and Commerce

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**A BILL**

To amend title XIX of the Social Security Act to assist severely disabled individuals to attain or maintain their maximum potential for independence and capacity to participate in community and family life.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Community and Family  
5 Living Amendments of 1985".

6 **SEC. 2. DEFINITIONS.**

7 Section 1905 of the Social Security Act is amended by  
8 adding at the end thereof the following new subsections:

1           "(o) SEVERELY DISABLED INDIVIDUAL.—The term  
2   'severely disabled individual' means an individual who is dis-  
3   abled (within the meaning of section 1614(a)(3) of this Act), if  
4   the onset of the disability occurred—

5           "(1) before the individual attained age 35, or

6           "(2) in the case of an individual whose disability  
7   is primarily due to a mental impairment, before the in-  
8   dividual attained age 22.

9           "(p) COMMUNITY AND FAMILY LIVING SERVICES.—  
10 The term 'community and family living services' means sup-  
11 portive services made available to a severely disabled individ-  
12 ual (or to his natural, adoptive, or foster family or spouse) to  
13 enable such individual to begin, resume, or continue living in  
14 a family home or community living facility. Such supportive  
15 services shall include both in-home and out-of-home services  
16 (as needed) from among those enumerated in section 1919(a).

17          "(q) FAMILY HOME.—The term 'family home' means a  
18 residence maintained by an individual (whether or not dis-  
19 abled) or a couple, or by a natural, adoptive, or foster family,  
20 in which one or more severely disabled individuals are living  
21 who receive medical assistance which includes payment for  
22 some services enumerated in section 1919(a).

23          "(r) COMMUNITY LIVING FACILITY.—The term 'com-  
24 munity living facility' means a single household, other than a

1 family home, composed of related or unrelated persons,  
2 which—

3           "(1) provides living arrangements and some care  
4           or service enumerated in section 1919(a) to one or  
5           more severely disabled individuals;

6           "(2) has a number of beds (exclusive of beds occu-  
7           pied by staff members) not in excess of the product ob-  
8           tained by multiplying by three the greater of—

9                   "(A) the number of individuals in an average  
10                  family household in the area in which such facility  
11                  is located (as determined in accordance with data  
12                  from the 1980 decennial census), or

13                   "(B) the number of individuals in an average  
14                  family household in such area (as determined in  
15                  accordance with any decennial census conducted  
16                  after the 1980 decennial census);

17           "(3) is located in a neighborhood which—

18                   "(A) is representative of residential neighbor-  
19                  hoods in such area, and

20                   "(B) is populated primarily by individuals  
21                  other than severely disabled individuals;

22           "(4) meets such standards of safety and sanitation,  
23           and other standards relating to services provided by  
24           the facility, as are established under regulations of the

1 Secretary for community living facilities, in addition to  
2 those applicable under State law;

3 "(5) meets the requirements of section 1861(j)(14)  
4 of this Act with respect to the personal funds of indi-  
5 viduals residing in such facility, and

6 "(6) is staffed by individuals who (A) are trained  
7 or retrained in accordance with the provisions of the  
8 community and family living implementation agreement  
9 entered into under section 1919(d) by the State in  
10 which such facility is located, and (B) in providing such  
11 living arrangements, care, or service to severely dis-  
12 abled individuals, cooperate with other providers and  
13 with appropriate case managers in implementing a  
14 written plan of habilitation or rehabilitation for each  
15 such individual;

16 except that paragraphs (2) and (3) shall not apply in the case  
17 of a facility which was in operation on September 30, 1985,  
18 has not increased the number of its beds since that date, and  
19 has no more than 15 beds (exclusive of accommodations for  
20 staff).

21 "(s) WRITTEN HABILITATION OR REHABILITATION  
22 PLAN.—The term 'written habilitation or rehabilitation plan'  
23 means a plan for medical assistance and other services for a  
24 severely disabled individual which is—

1           "(1) developed by an interdisciplinary team con-  
2           sisting of—

3                   "(A) individuals who are representative of  
4           professional and other disciplines which are rele-  
5           vant to the habilitation or rehabilitation of such  
6           individual, and have been involved in providing  
7           services to the individual or are likely to be in-  
8           volved in providing services to the individual, and

9                   "(B) such individual, persons requested to  
10          participate by the individual, and, when appropri-  
11          ate, the spouse, parent, guardian, other family  
12          member, or advocate of such individual;

13          "(2) responsive to the individual needs of such in-  
14          dividual, as determined by members of the team  
15          through individual assessment;

16          "(3) designed to enable such individual to attain  
17          or retain to the greatest extent possible capabilities for  
18          independence or self-care;

19          "(4) designed to promote and increase interaction  
20          between disabled and nondisabled individuals within  
21          the community; and

22          "(5) reevaluated by such team at least once each  
23          year.

24          "(t) CASE MANAGEMENT SERVICES.—The term 'case  
25          management services' means, with respect to any severely

1 disabled individual, services rendered to such individual by a  
2 designated qualified professional who—

3 "(1) has a continuing relationship with such indi-  
4 vidual but who is not associated with the community  
5 living facility or family home or other provider of on go-  
6 ing direct services to such individual;

7 "(2) coordinates the development and implementa-  
8 tion of the individual written plan of habilitation or re-  
9 habilitation for such individual;

10 "(3) provides such individual (or his spouse,  
11 parent, guardian, other family member, or advocate, as  
12 appropriate) with information about, and referral to,  
13 appropriate social, educational, vocational, medical, ad-  
14 vocacy, or other services which are among or in addi-  
15 tion to those for which payment may be made under  
16 this title;

17 "(4) assists in procuring such services as  
18 necessary;

19 "(5) periodically reviews the changing needs of  
20 such individual and the appropriateness of the medical  
21 assistance and other services provided to such  
22 individual;

23 "(6) cooperates with personnel in school, employ-  
24 ment related, or treatment settings who have specific  
25 responsibilities for developing or implementing any in-

1       dividual education plan, plan of vocational services, or  
2       plan of treatment designed for such individual, so that  
3       all such plans are, to the greatest extent possible, co-  
4       ordinated and complementary; and

5               "(7) is available to such individual or his family  
6       for consultation or crisis intervention when required.

7       "(u) INDIVIDUAL AND FAMILY SUPPORT SERVICES.—

8       The term 'individual and family support services' means—

9               "(1) those services provided to a severely disabled  
10       individual which the individual's interdisciplinary team  
11       (described in subsection (s)(1)) determines are appropri-  
12       ate for carrying out those activities of daily living  
13       which the individual cannot perform for himself, includ-  
14       ing nonmedical personal care, assistance in ambulating  
15       or transferring, limited domestic services, and assist-  
16       ance with communicative devices and aids, and

17               "(2) services provided to the family of a severely  
18       disabled individual which the individual's interdiscipli-  
19       nary team determines are appropriate for assisting the  
20       family in providing services described in paragraph (1)  
21       to the individual, including respite care.

22       "(v) CLUSTER HOME.—The term 'cluster home' means  
23       a facility which—

24               "(1) was in operation on September 30, 1985;

1           "(2) has not increased its number of beds since  
2       September 30, 1985; and

3           "(3) consists of a cluster of two or three facilities  
4       in proximity to one another, each of which would meet  
5       the definition of a community living facility (as defined  
6       in subsection (r)), except that the presence of the other  
7       facilities of the cluster in the neighborhood violates the  
8       requirement of subsection (r)(3).

9       "(w) PROTECTIVE INTERVENTION SERVICES.—The  
10      term 'protective intervention services' means those services  
11      necessary for intervention by an agency or agencies so au-  
12      thorized under State law in situations where there is suspi-  
13      cion of abuse, neglect, or exploitation of a severely disabled  
14      individual and includes—

15           "(1) preliminary investigation and evaluation of  
16      reports of abuse, neglect, and exploitation;

17           "(2) medical and psychiatric evaluations (if neces-  
18      sary);

19           "(3) referral to appropriate law enforcement agen-  
20      cies; and

21           "(4) securing coordinated services needed by a se-  
22      verely disabled individual when the individual is unable  
23      to secure the services on his own account."

1   **SEC. 3. COMMUNITY AND FAMILY LIVING SERVICES FOR CER-**  
2                   **TAIN SEVERELY DISABLED INDIVIDUALS.**

3           (a) STATE PLAN REQUIREMENT.—Section 1902(a) of  
4   the Social Security Act is amended—

5               (1) by striking out "and" at the end of paragraph  
6               (45);

7               (2) by striking out the period at the end of para-  
8               graph (46) and inserting in lieu thereof "; and"; and

9               (3) by inserting after paragraph (46) the following  
10              new paragraph:

11              "(47) effective not later than October 1, 1988,  
12              provide that with respect to any severely disabled indi-  
13              vidual who is entitled to medical assistance under such  
14              plan and who resides in a family home or community  
15              living facility, such assistance shall include an array of  
16              community and family living services which the State  
17              determines are appropriate, when combined with other  
18              medical assistance available under the plan and with  
19              other available resources, to assist in providing for the  
20              health, safety, and effective habilitation or rehabilita-  
21              tion of such individual, including at a minimum case  
22              management services, individual and family support  
23              services, and protective intervention services."

24           (b) INCLUSION AS MEDICAL ASSISTANCE.—Section  
25   1905(a)(13) of such Act is amended by inserting before the  
26   semicolon at the end thereof the following: ", including com-

1 munity and family living services for severely disabled  
2 individuals".

3 (c) SERVICES FOR SEVERELY DISABLED INDIVID-  
4 UALS.—Title XIX of such Act is amended by adding at the  
5 end thereof the following new section:

6 "MEDICAL ASSISTANCE, HABILITATION, AND REHABILITA-  
7 TION FOR SEVERELY DISABLED INDIVIDUALS

8 "SEC. 1919. (a) COMMUNITY AND FAMILY LIVING  
9 SERVICES.—

10 "(1) PAYMENT AUTHORIZED.—For purposes of  
11 section 1903, amounts expended by a State under its  
12 State plan for community and family living services  
13 may be included as medical assistance only if—

14 "(A) such services are provided—

15 "(i) to a severely disabled individual re-  
16 siding in a family home or in a community  
17 living facility, and

18 "(ii) in accordance with an individual  
19 written habilitation or rehabilitation plan;  
20 and

21 "(B) the State meets the maintenance of  
22 effort requirement described in paragraph (5) for  
23 the calendar quarter in which the services are  
24 furnished.

1           "(2) SERVICES INCLUDED.—The following types  
2           of services may be included as community and family  
3           living services:

4                   "(A) Case management services (as defined  
5                   in section 1905(t)).

6                   "(B) Individual and family support services  
7                   (as defined in section 1905(u)).

8                   "(C) Protective intervention services (as de-  
9                   fined in section 1905(w)).

10                  "(D) Periodic interdisciplinary diagnostic and  
11                  assessment services. , -

12                  "(E) Personal assistance and attendant care.

13                  "(F) Domestic assistance necessitated by the  
14                  individual's disability.

15                  "(G) Services to enable the individual to im-  
16                  prove or maintain functional capacities.

17                  "(H) Prostheses, assistive devices, supplies,  
18                  appliances, and communicative aids and devices.

19                  "(I) Preventive and therapeutic dental  
20                  services.

21                  "(J) Adaptation of equipment and vehicles,  
22                  and of housing or other space, to be used by a se-  
23                  verely disabled individual.

24                  "(K) Comprehensive outpatient rehabilitation  
25                  facility services.

1                   "(L) Adult day programs.

2                   "(M) Purchase, training, and maintenance of  
3                   guide dogs and similar trained animals.

4                   "(N) Services (other than board, lodging, and  
5                   basic foster care) provided to any severely dis-  
6                   abled individual by members of a family or house-  
7                   hold in which such individual is living.

8                   "(O) Support services to families and care-  
9                   givers, including specialized training and respite  
10                  care in or out of the home or usual residence.

11                  "(P) Special transportation services.

12                  "(Q) Homemaker and home health services.

13                                  "(R) Chore services.

14                                  "(S) Crisis intervention.

15                  "(T) Personal guidance, supervision, counsel-  
16                                  ing, representation, and advocacy.

17                  "(U) Specialized vocational services which  
18                   will enhance the independence, productivity, and  
19                   community integration of a severely disabled indi-  
20                   vidual, including employment training, support  
21                   necessary to maintain the employment of such in-  
22                   dividual, orientation and mobility training, and  
23                   other training and therapeutic activities specified  
24                   in the written plan of habilitation or rehabilitation  
25                   developed with respect to such individual and for

1           which the individual is not eligible under the Re-  
2           habilitation Act.

3           "(V) Appropriate preventive services to de-  
4           crease the needs of severely disabled individuals  
5           for future services.

6           "(W) Any other services identified by the  
7           State and approved by the Secretary as conform-  
8           ing with the purposes of this section.

9           "(3) SERVICES EXCLUDED.—The following serv-  
10          ices may not be included as community and family  
11          living services:

12                "(A) Room and board, other than room and  
13                board provided for less than six consecutive weeks  
14                and less than twelve weeks in a year as an inte-  
15                gral but subordinate part of a service described in  
16                paragraph (2). However, auxiliary payments may  
17                be made as medical assistance to cover extraordi-  
18                nary costs of food or housing attributable to the  
19                disabling condition of a particular individual or  
20                individuals.

21                "(B) Any service for which payment is made  
22                under section 403 or 422 of this Act.

23                "(C) Cash payments as a service.

24                "(D) Any service to any individual to the  
25                extent that the provider of the service or the indi-

vidual receiving the service is eligible to receive payment under title XVE3 with respect to the provision of the service.

"(E) Any educational service which the State makes generally available to its residents without cost and without regard to their income.

"(F) Any service to any severely disabled individual living in any hospital, skilled nursing facility, or intermediate care facility (including any such hospital or facility for mental diseases).

"(4) ADMINISTRATIVE COSTS.—Amounts expended by the State or by a provider of services to administer the provision of community and family living services pursuant to this section shall be treated as administrative costs of the State plan.

"(5) REQUIRED MAINTENANCE OF EFFORT.—

"(A) GENERAL RULE.—A State meets the maintenance of effort requirement of this paragraph only if, for in the quarter in which community and family living services are provided, the total amount of the funds expended by the State (and political subdivisions thereof) from non-Federal funds for these services for eligible severely disabled individuals is at least equal to the base amount (described in subparagraph (B)) increased

1 (for calendar quarters beginning after October 1,  
2 1985) by an inflation factor (described in subpara-  
3 graph (C)).

4 "(B) BASE AMOUNT.—The base amount, re-  
5 ferred to in subparagraph (A), is the average  
6 quarterly amount of the funds expended (during  
7 the 4-quarter period ending September 30, 1985)  
8 by the State (and political subdivisions thereof)  
9 from non-Federal funds under the plan for serv-  
10 ices that are community and family living  
11 services.

12 "(C) INFLATION FACTOR.—The inflation  
13 factor, referred to in subparagraph (A) for a calen-  
14 dar quarter, is a factor, established by Secretary,  
15 that takes into account inflation in the costs for  
16 community and family living services or similar  
17 services between March 1985 and the quarter  
18 involved.

19 "(b) RELATION TO OTHER SERVICES AND GROUNDS  
20 FOR ELIGIBILITY.—

21 "(1) SERVICES ARE IN ADDITION TO OTHER  
22 MEDICAL ASSISTANCE.—Community and family living  
23 services provided pursuant to this section shall be in  
24 addition to any other medical assistance for which a

1 severely disabled individual is otherwise eligible under  
2 the State plan.

3 "(2) NO CHANGE IN OTHER ELIGIBILITY.—Noth-  
4 ing in this section shall be construed to deny to any  
5 eligible individual medical assistance to which the indi-  
6 vidual would be entitled under any other section of this  
7 title.

8 "(c) STATE REQUIREMENTS.—In order to receive pay-  
9 ment after September 30, 1988, under section 1903 with re-  
10 spect to any community and family living services provided  
11 under the State plan to any eligible severely disabled individ-  
12 ual, a State agency administering or supervising the adminis-  
13 tration of a State plan under this title shall—

14 "(1) enter into a community and family living im-  
15 plementation agreement with the Secretary in accord-  
16 ance with subsection (d);

17 "(2) report to the Secretary on the implementa-  
18 tion of such agreement in such form and with such fre-  
19 quency as the Secretary may prescribe (which shall be  
20 not less than once nor more than four times each fiscal  
21 year);

22 "(3) make a copy of such agreement and reports  
23 available for public inspection during normal business  
24 hours at readily accessible locations in the State;

1           "(4) provide for review by an independent auditor  
2       each fiscal year (in accordance with generally accepted  
3       auditing standards) of care and services provided to se-  
4       verely disabled individuals in such State under such  
5       plan during such year in order to ensure compliance by  
6       the State with the provisions of such plan and with the  
7       amendments made by the Community and Family  
8       Living Amendments of 1985; and

9           "(5) submit a copy of any such audit to the Gov-  
10      ernor of the State, the legislature of the State, and the  
11      Secretary not later than 120 days after the close of the  
12      fiscal year to which such audit pertains.

13      "(d) COMMUNITY AND FAMILY LIVING IMPLEMENT A-  
14      TION AGREEMENT.—The community and family living im-  
15      plementation agreement required under subsection (c)(1) must  
16      include the following provisions:

17           "(1) COMMUNITY AND FAMILY LIVING SERV-  
18      ICES.—The agreement must include provisions to  
19      assure that—

20           "(A) community living facilities are not  
21      unduly concentrated in any residential area (but  
22      may allow for cluster homes);

23           "(B) every individual on the staff of a com-  
24      munity living facility who is involved in providing  
25      services to severely disabled individuals for which

1 any payment is made under this title has received  
2 or will receive adequate and continuing training  
3 or retraining in the provision of services to such  
4 individuals;

5 "(C) training will be made available to natu-  
6 ral, adoptive, and foster parents of severely dis-  
7 abled persons eligible for medical assistance;

8 "(D) case management services and, as nec-  
9 essary, individual and family support services, are  
10 available to any severely disabled individual eligi-  
11 ble to receive services under this title;

12 "(E) protective intervention services are  
13 available, as necessary, to any severely disabled  
14 individual who is, or would except for his income  
15 or resources be, eligible to receive services under  
16 this title;

17 "(F) any severely disabled individual for  
18 whom a public agency (or an agency under con-  
19 tract to a public agency) arranges placement will  
20 have an opportunity to reside in a family home or  
21 community living facility that is located as close  
22 to the home of the natural, adoptive, or foster  
23 family of such individual as is consistent with the  
24 best interests of such individual;

1           "(G) each community living facility or family  
2           home is accredited by an appropriate national ac-  
3           crediting body or is licensed or certified by an ap-  
4           propriate State agency;

5           "(H) periodic independent monitoring or re-  
6           views are conducted of the quality of services pro-  
7           vided to severely disabled individuals residing in  
8           family homes or community living facilities;

9           "(I) procedures are established for granting  
10          an opportunity for a timely appeal and a speedy  
11          hearing before an impartial hearing officer—

12                 "(i) to any individual who believes him-  
13                 self to be inappropriately placed or who is  
14                 denied an appropriate placement or service,  
15                 or who is being scheduled for transfer (other  
16                 than under the provisions of paragraph (2)(D)  
17                 of this subsection and other than on his own  
18                 initiative) from one living arrangement (in-  
19                 cluding his own home) to another, or

20                 "(ii) as appropriate, to his spouse,  
21                 parent, guardian, appropriate family member,  
22                 or advocate acting on his behalf,

23           and for giving written notice to affected parties at  
24           least 30 days before such proposed transfer except  
25           in an emergency;

1           "(J) the availability (including volume and  
2           distribution) of care and services of high quality to  
3           severely disabled individuals who are or could be  
4           living in a family home or community living facili-  
5           ty will be increased until adequate to meet chang-  
6           ing needs;

7           "(K) the availability of suitable domestic ar-  
8           rangements and services (whether supplied direct-  
9           ly or by incentives to the private sector) will be  
10          increased until adequate to enable severely dis-  
11          abled individuals who are eligible for supplemental  
12          security income benefits under title XVI to live in  
13          family homes or community living facilities; and

14          "(L) suitable State supplementary payments,  
15          as authorized under sections 1616 and 1618, or  
16          other assistance in cash or in kind to or on behalf  
17          of such individuals, based on their need for shelter  
18          or maintenance, or both, will be made available  
19          not later than October 1, 1989.

20          "(2) SEVERELY DISABLED INDIVIDUALS LIVING  
21          IN RESIDENTIAL FACILITIES WHICH ARE NOT FAMILY  
22          HOMES OR COMMUNITY LIVING FACILITIES.—THE  
23          agreement must include provisions with respect to se-  
24          verely disabled individuals who are living in residential

1 facilities which are not family homes or community  
2 living facilities which assure that—

3 "(A) admissions to such residential facilities  
4 will be limited through the use of individually  
5 planned and appropriate community and family  
6 living services;

7 "(B) within one year after October 1, 1988,  
8 and annually thereafter, individuals eligible for  
9 medical assistance who are living in skilled nurs-  
10 ing facilities, intermediate care facilities, board  
11 and care facilities, or other public or private facili-  
12 ties, having 16 or more beds and in which a sig-  
13 nificant number of recipients of supplemental se-  
14 curity income benefits are likely to reside, will be  
15 identified, and the needs of such individuals will  
16 be assessed, including a description of the types of  
17 medical assistance and other services that such in-  
18 dividual will require when transferred to a family  
19 home or community living facility;

20 "(C) the number of individuals who are at  
21 any one time identified in subparagraph (B) will  
22 be reduced progressively over a period of ten  
23 years, such reductions to take place according to  
24 a plan to be set forth in the agreement;

1           "(D) prior to transfer of any severely dis-  
2           abled individual residing at any time during the  
3           period of the agreement in a skilled nursing facili-  
4           ty, an intermediate care facility, or a board and  
5           care facility, to a family home or community  
6           living facility located in such State, a community  
7           services transfer plan will be developed through a  
8           process which—

9                   "(i) identifies the specific community  
10                  and family living services, as well as other  
11                  services, that such individual will require and  
12                  will have available when such individual is  
13                  transferred to a community living facility or  
14                  family home;

15                  "(ii) involves the interdisciplinary team  
16                  (or other professional group) responsible for  
17                  the individual treatment plan or written plan  
18                  of care or habilitation or rehabilitation with  
19                  respect to such individual while residing in  
20                  the facility from which transfer is to be  
21                  made, and the case manager and other ap-  
22                  propriate professional personnel who are  
23                  likely to be involved in providing services to  
24                  the individual in the community; and

1                   "(iii) provides to the individual and as  
2                   appropriate to his spouse, parent, guardian,  
3                   appropriate family member, or advocate, an  
4                   opportunity to participate in developing the  
5                   community services transfer plan;

6                   "(E) any severely disabled individual de-  
7                   scribed in subparagraph (D), and his spouse,  
8                   parent, guardian, appropriate family member, or  
9                   advocate, are notified in writing at least 60 days  
10                  before the date of any proposed transfer of such  
11                  individual to a family home or community living  
12                  facility;

13                  "(F) procedures are established for granting  
14                  to a severely disabled individual described in sub-  
15                  paragraph (D) or, as appropriate, to his spouse,  
16                  parent, guardian, appropriate family member, or  
17                  advocate, an opportunity for an appeal regarding  
18                  the transfer plan developed under subparagraph  
19                  (D) with respect to such individual, and for a fair  
20                  hearing before an impartial hearing officer desig-  
21                  nated by the State, on the grounds that—

22                         "(i) the types of health related services,  
23                         habilitation, rehabilitation, housing, or other  
24                         services specified in the community services

1 transfer plan developed with respect to such  
2 individual are inappropriate or inadequate; or

3 "(ii) a particular type of health related  
4 service, habilitation, rehabilitation, housing,  
5 or other service specified in such plan is not  
6 yet available in the area in which such indi-  
7 vidual will reside;

8 "(G) alternate provisions will be made for  
9 appropriate care (including basic maintenance if  
10 needed) and services for any severely disabled in-  
11 dividual eligible for medical assistance who has  
12 been living in a facility or institution which has  
13 been receiving payments for care, treatment, or  
14 maintenance of such individual under this title and  
15 which ceases to receive such payments, or ceases  
16 to provide such care and services to such individ-  
17 ual, other than at the request of the individual or  
18 his representative;

19 "(H) not later than October 1, 1998, any  
20 public or private institution (other than a correc-  
21 tional institution) receiving any State or Federal  
22 funds (under this title or any other provision of  
23 law), which is not a family home or community  
24 living facility and which admits severely disabled  
25 individuals as inpatients or residents, will be

1           either accredited by an appropriate national ac-  
2           crediting body or certified as a skilled nursing fa-  
3           cility or intermediate care facility under this title;

4           "(I) the State will cooperate in any on-site  
5           sample surveys and validation procedures which  
6           may be conducted by the Secretary under section  
7           1903(g)(2) and which may, at the discretion of the  
8           Secretary, include—

9                   "(i) inspection of individual records with  
10                  special reference to compliance with the re-  
11                  quirements of this section and the other  
12                  amendments made by the Community and  
13                  Family Living Amendments of 1985, and

14                  "(ii) interviews with residents and with  
15                  their relatives or guardians and with staff  
16                  and State officials.

17           "(3) DESCRIPTION OF METHODS TO ACHIEVE  
18           OBJECTIVES.—The agreement must include descrip-  
19           tions of the methods to be used to achieve the follow-  
20           ing objectives:

21                  "(A) To advise severely disabled individuals  
22                  or families or other advocates, individually and  
23                  collectively, of the alternative arrangements and  
24                  services available to them, of their right to free-  
25                  dom of choice of provider under section

1 1902(a)(23), and of their right to a fair hearing  
2 under section 1902(a)(3) and this section.

3 "(B) To assure fair and equitable provisions  
4 (as determined by the Secretary in consultation  
5 with the Secretary of Labor) to protect the inter-  
6 ests of public employees who will be affected by  
7 the transfer of severely disabled individuals from  
8 public institutions, including public medical insti-  
9 tutions, to community or family living facilities  
10 under the agreement, and that maximum efforts  
11 will be made to provide for the employment of  
12 such employees, including arrangements designed  
13 to preserve employee rights and benefits and ar-  
14 rangements to provide (where necessary) for the  
15 training or retraining of such employees.

16 "(C) To assure application of fair employ-  
17 ment standards and equitable compensation to  
18 workers in private programs and facilities offering  
19 care and services for which payments are made  
20 under this title.

21 "(D) To assure timely submission of any de-  
22 mographic, fiscal, or other reports by the State as  
23 required by the Secretary, relating to community  
24 or institutional services to severely disabled indi-  
25 viduals, including, if requested, copies of any sur-

1           veys or plans of correction for major modification  
2           by any intermediate care facility for the mentally  
3           retarded or persons with related disorders, or  
4           other intermediate care facility or skilled nursing  
5           facility within the State.

6           "(E) To assure opportunities for participation  
7           by interested citizens in the development of the  
8           implementation plan or agreement, including op-  
9           portunities for persons who have sensory or other  
10          communication impairments.

11          "(4) REVIEW OF PLAN BY STATE PLANNING  
12          COUNCILS.—The State planning council (established  
13          under section 124 of the Developmental Disabilities  
14          Assistance and Bill of Rights Act) will review and  
15          comment on the agreement provided under this  
16          subsection.

17          "(e) AUDIT.—The Secretary may provide for an inde-  
18          pendent audit of medical assistance provided under any State  
19          plan in order to ensure the compliance of such plan with the  
20          provisions of this section and with the other amendments  
21          made by the Community and Family Living Amendments of  
22          1985. Such audit shall be conducted in accordance with gen-  
23          erally accepted auditing standards.

24          "(f) NONCOMPLIANCE.—If, on the basis of an audit con-  
25          ducted in accordance with subsection (e), and after affording

1 the State agency notice and an opportunity to comment, the  
2 Secretary finds that any amount paid to a State under section  
3 1903 with respect to medical assistance for severely disabled  
4 individuals has been expended under such plan in a manner  
5 that does not comply with the provisions of this section or of  
6 any of the other amendments made by the Community and  
7 Family Living Amendments of 1985, the Secretary may treat  
8 such amount as an overpayment to such State under section  
9 1903(d)(5).

10 "(g) REVIEW BY COMPTROLLER GENERAL.—The  
11 Comptroller General of the United States shall, from time to  
12 time, review State plans approved by the Secretary pursuant  
13 to section 1902 in order to ensure the compliance of such  
14 plans with the provisions of this section and the other amend-  
15 ments made by the Community and Family Living Amend-  
16 ments of 1985.

17 "(h) WAIVES OF STATEWIDE REQUIREMENT.—For  
18 any 2-year period, a State may provide any new service  
19 under this section without regard to the statewide require-  
20 ment of section 1902(a)(1).".

21 (d) INTERMEDIATE CARE FACILITY SERVICES IN AN  
22 INSTITUTION FOR THE MENTALLY RETARDED.—Section  
23 1905(d) of the Social Security Act is amended—

24 (1) by striking out "public";

1           (2) by striking out "and" at the end of paragraph  
2           (2); and

3           (3) by striking out paragraph (3) and inserting in  
4           lieu thereof the following:

5           "(3) the individual needs of each newly admitted  
6           individual are ascertained by an interdisciplinary team  
7           within 30 days, and an individual written habilitation  
8           or rehabilitation plan is developed for the individual,  
9           including an assessment of his needs for community  
10          and family living services; and

11          "(4) the institution, if not operated by the State,  
12          has a written agreement with an appropriate State  
13          agency to cooperate in the implementation of the  
14          agreement between the State and the Secretary.".

15          (e) CONFORMING AMENDMENTS.—

16          (1) Section 1903(a)(2) of the Social Security Act  
17          is amended—

18                  (A) by inserting after "professional medical  
19                  personnel" the following: "or personnel skilled in  
20                  the delivery of community and family living serv-  
21                  ices needed by severely disabled individuals"; and

22                  (B) by inserting after "other public agency"  
23                  the following "or any agency under contract to  
24                  the State to provide services under section 1919".

1           (2) Section 1915(0 of the Social Security Act is  
2           amended by inserting "or implementation agreement"  
3           after "plan amendment".

4   **SEC. 4. LIMITATION ON PAYMENTS FOR SERVICES PROVIDED**  
5                           **IN LARGE FACILITIES.**

6           Section 1903 of the Social Security Act is amended by  
7           inserting after subsection (r) the following new subsection:

8           "(s) LIMITATION ON PAYMENTS FOR SERVICES PRO-  
9           VIDED IN LARGE FACILITIES.—

10           "(1) GENERAL RULE.—

11                   "(A) Effective for quarters beginning on or  
12           after October 1, 2000, the aggregate amount pay-  
13           able under this title to any State for any quarter  
14           for skilled nursing facility services and intermedi-  
15           ate care facility services furnished to severely dis-  
16           abled individuals under 65 years of age in facili-  
17           ties having more than 15 beds, shall not exceed  
18           an amount equal to 15 percent of the greater of—

19                   "(i) 25 percent of the amount paid  
20           under this title to such State for any fiscal  
21           year (selected by the State) ending prior to  
22           October 1, 1985, for intermediate care facili-  
23           ty services provided in an intermediate care  
24           facility for the mentally retarded (described  
25           in section 1905(d)), or

1           "(ii) the aggregate amount paid under  
2           this title to such State for the quarter ending  
3           on December 31, 1989, for skilled nursing  
4           facility services and intermediate care facility  
5           services furnished to severely disabled indi-  
6           viduals (as defined in section 1905(o)) under  
7           65 years of age in facilities having more than  
8           15 beds,  
9           increased or decreased in accordance with sub-  
10          paragraph (B).

"(B) The limitation amount for a State determined under subparagraph (A) shall be increased or decreased by the percentage increase or decrease in the medical care component of the consumer price index for all urban consumers (U.S. city average, as published by the Department of Labor) from the fiscal year applicable under clause (i) of subparagraph (A), or from fiscal year 1989 in the case of clause (ii) of subparagraph (A), to the fiscal year to which the limitation is being applied.

"(C) For purposes of applying this subsection, aggregate amounts paid under this title shall be determined without adjustments for amounts

1           recovered from third parties considered as over-  
2           payments.

3           "(2) EXEMPTIONS FROM LIMITATION.—The limi-  
4           tation on payments in paragraph (1) shall not apply to  
5           the following payments for skilled nursing facility serv-  
6           ices or intermediate care facility services provided in a  
7           facility which unconditionally meets all requirements  
8           applicable to such type of facility (including appropri-  
9           ateness of admissions):

10                 "(A) Payments for such services for individ-  
11                 uals in a facility which meets the size and location  
12                 requirements for a community living facility.

13                 "(B) Payments for such services for individ-  
14                 uals in a facility which was in operation on Sep-  
15                 tember 30, 1985, has not increased the number of  
16                 beds since September 30, 1985, and has no more  
17                 than 15 beds (exclusive of accommodations for  
18                 staff).

19                 "(C) Payments for such services for individ-  
20                 uals in a cluster home.

21                 "(D) Payments for such services for any indi-  
22                 vidual, if the facility furnishes services which—

23                         "(i) are necessary for the achievement  
24                         of one or more significant developmental or

1           therapeutic objectives with respect to such  
2           individual, and

3           "(ii) are not available in a family home  
4           or community living facility in such State;

5           but only to the extent that the amount of time in  
6           which such individual will reside in such facility  
7           (as projected by the interdisciplinary team which  
8           develops such individual's written habilitation or  
9           rehabilitation plan at the time of admission), when  
10          combined with the amount of time in which such  
11          individual resided in any skilled nursing facility or  
12          intermediate care facility after September 30,  
13          2000, does not exceed two years."

14   SEC. 5. REDUCTION IN FEDERAL MATCHING FOR SERVICES  
15                   PROVIDED IN LARGE FACILITIES.

16          Section 1903 of the Social Security Act (as amended by  
17   section 4 of this Act) is amended by inserting after subsection  
18   (s) the following new subsection:

19          "(t) REDUCTION IN FEDERAL MATCHING FOR SERV-  
20   ICES PROVIDED IN LARGE FACILITIES.—

21               "(1) GENERAL RULE.—Effective for quarters be-  
22   ginning on or after October 1, 1988, the Federal medi-  
23   cal assistance percentage shall be reduced for skilled  
24   nursing facility services and intermediate care facility

1 services, furnished to any severely disabled individual  
2 under 65 years of age.

3 "(2) AMOUNT OF REDUCTION.—The reduction in  
4 the Federal medical assistance percentage under para-  
5 graph (1) shall be—

6 "(A) in the case of a State having in effect a  
7 community and family living implementation  
8 agreement under section 1919(d), one percent of  
9 the Federal medical assistance percentage which  
10 would otherwise apply but for this subsection, for  
11 each quarter which has elapsed after September  
12 30, 1988, and before October 1, 1998; and

13 "(B) in the case of a State not having such  
14 an agreement in effect—

15 "(i) two percent of the Federal medical  
16 assistance percentage which would otherwise  
17 apply but for this subsection, for each quar-  
18 ter which has elapsed after September 30,  
19 1988, and before October 1, 1993, plus

20 "(ii) one percent of the Federal medical  
21 assistance which would otherwise apply but  
22 for this subsection, for each quarter which  
23 has elapsed after September 30, 1993, and  
24 before October 1, 1998.

1           "(3) EXEMPTIONS FROM REDUCTION.—The re-  
2           duction under paragraph (1) shall not apply to services  
3           furnished in any facility described in subsection (s)(2).".

4   SEC. 6. PROTECTION OF RIGHTS OF SEVERELY DISABLED IN-  
5           DIVIDUALS.

6           Section 1919 of the Social Security Act (added by sec-  
7           tion 3 of this Act) is amended by adding at the end thereof  
8           the following new subsection:

9           "(i) PROTECTION OF RIGHTS.—In order to receive any  
10          payments pursuant to subsection (a)(1)—

11           "(1) the State must have in effect a system (which  
12           meets the requirements of part C of the Developmental  
13           Disabilities Assistance and Bill of Rights Act) to pro-  
14           tect and advocate those rights of severely disabled indi-  
15           viduals eligible for medical assistance which relate to  
16           the provision of such assistance, and

17           "(2) services provided under the system in order  
18           to comply with paragraph (1) must be in addition to  
19           services provided by the Federal Government as of  
20           September 1985.".

21   SEC. 7. PRIVATE ENFORCEMENT.

22           Section 1919 of the Social Security Act (as amended by  
23           section 6 of this Act) is further amended by adding at the end  
24           thereof the following new subsection:

25           "(j) PRIVATE ENFORCEMENT.—

1           "(1) IN GENERAL.—(A) Except as provided in  
2 paragraph (3), any person injured or adversely affected  
3 or aggrieved by a violation of this section, or of the  
4 other amendments made by the Community and  
5 Family Living Amendments of 1985, by a State  
6 agency administering the State plan may bring an  
7 action to enjoin such violation.

8           "(B) An action brought under this paragraph shall  
9 be brought in the appropriate district court of the  
10 United States within the State in which such State  
11 plan is in operation.

12           "(C) The party bringing such action may elect, by  
13 so stating in the complaint filed at the commencement  
14 of such action, to recover reasonable attorney's fees  
15 and costs from the defendant in the event that such  
16 party prevails.

17           "(2) NOTICE.—Not less than 15 days before com-  
18 mencing an action under this subsection, an interested  
19 party shall give notice by registered mail to the Secre-  
20 tary, the Attorney General of the United States, and  
21 the State agency administering the State plan alleged  
22 to be in violation of this section or of another amend-  
23 ment made by the Community and Family Living  
24 Amendments of 1985. Such notice shall state the

1 nature of the alleged violation and the court in which  
2 such action will be brought.

3 "(3) APPROVAL OF STATE PLAN SHALL NOT  
4 CONSTITUTE A DEFENSE.—The approval of the State  
5 plan under section 1902(b) shall not be a bar to the  
6 bringing of an action under this subsection, nor shall it  
7 constitute a defense to any such action."

8 SEC. 8. RATES OF PAYMENT FOR SERVICES.

9 Section 1902(a)(13) of the Social Security Act is amend-  
10 ed by striking out "and" at the end of subparagraph (B), by  
11 adding "and" at the end of subparagraph (C), and by adding  
12 at the end thereof the following new subparagraph:

13 "(D) for payment for community and family  
14 living services for severely disabled individuals,  
15 described in section 1919 and provided under the  
16 plan, through the use of rates (determined in ac-  
17 cordance with methods and standards developed  
18 by the State) which the State finds, and makes  
19 assurances satisfactory to the Secretary, are rea-  
20 sonable and adequate to assure the provision of  
21 care and service in conformity with applicable  
22 State and Federal laws and regulations, and ap-  
23 plicable quality and safety standards, and to  
24 assure that severely disabled individuals eligible  
25 for medical assistance have reasonable access

1           (taking into account geographic location and rea-  
2           sonable traveltime for family and friends) to com-  
3           munity and family living services of adequate  
4           quality;".

5   SEC. 9. MEDICAID ELIGIBILITY OF CERTAIN SEVERELY DIS-  
6                           ABLED INDIVIDUALS.

7           (a) OPTIONAL ELIGIBILITY.—Section 1902 of the  
8   Social Security Act is amended by adding at the end thereof  
9   the following new subsection:

10          "(k) ELIGIBILITY OF CERTAIN SEVERELY DISABLED  
11   INDIVIDUALS.—Notwithstanding any other provision of this  
12   title, a State may, at its option, provide for making payment  
13   for community and family living services, or any other service  
14   included in the State plan as medical assistance, to any se-  
15   verely disabled individual who expends (or is a member of a  
16   family which expends) at least 5 percent of the adjusted gross  
17   income (as defined in section 62 of the Internal Revenue  
18   Code of 1954) of such individual or family, as the case may  
19   be, for necessary medical care (as defined in section 213 of  
20   the Internal Revenue Code) and for community and family  
21   living services described in section 1919 provided to such  
22   individual. A State electing this option shall set forth in its  
23   State plan and its implementation agreement the criteria  
24   which the State will use in identifying individuals or reasona-  
25   ble classifications of such individuals, and the extent of the

1 services for which payment may be authorized under this  
2 subsection."

3 (b) EXEMPTION FROM FAMILY INCOME LIMITA-  
4 TION.—Section 1903(0(4) of such Act is amended—

5 (1) by adding "or" at the end of subparagraph  
6 (C); and

7 (2) by inserting after subparagraph (C) the follow-  
8 ing new subparagraph:

9 "(D) who meets the requirements of section  
10 1902(k),".

11 (c) UNIFORM INCOME STANDARD, AND EXPANDED  
12 ELIGIBILITY.—Section 1902(a)(10)(A)(ii) of such Act is  
13 amended—

14 (1) by striking out "or" at the end of subclause  
15 (V) and inserting in lieu thereof: "*Provided, however,*  
16 That if the State establishes such a separate income  
17 standard for individuals who are in any medical institu-  
18 tion, the State must establish the same separate  
19 income standard for all severely disabled individuals,";

20 (2) by striking out the semicolon at the end of  
21 subclause (VI) and inserting in lieu thereof ", or"; and

22 (3) by adding at the end thereof the following:

23 "(VII) who are disabled children  
24 or disabled spouses who, except for re-  
25 sources deemed to them, would be eligi-

1                   ble for supplementary security income  
2                   benefits under title XVI;".

3           (d) CONTINUED ELIGIBILITY OF CERTAIN GAINFULLY  
4 EMPLOYED INDIVIDUALS.—Section 1902(e) of such Act is  
5 amended by adding at the end the following new paragraph:

6           "(5) Any severely disabled individual under age 65 who,  
7 for the month preceding the first month in the period to  
8 which this paragraph applies, is entitled to medical assistance  
9 under the plan by reason of being under a disability and who  
10 would otherwise be denied assistance by reason of section  
11 1611(e)(4) or because his earnings have demonstrated a ca-  
12 pacity to engage in substantial gainful activity (or any similar  
13 reason designated by the Secretary) shall nevertheless be  
14 considered to remain such a disabled individual (for purposes  
15 of continuing to be eligible to receive medical assistance  
16 under the plan), for so long as the Secretary determines  
17 that—

18           "(A) the individual continues to have the disabling  
19 physical or mental impairment on the basis of which  
20 the individual was found to be under a disability, and  
21 continues to meet all non-disability-related require-  
22 ments (other than those that relate to earnings) for eli-  
23 gibility for medical assistance under the plan;

24           "(B) the termination of eligibility for assistance  
25 under this title would—

1                   "(i) seriously inhibit the individual's ability to  
2                   continue employment, or

3                   "(ii) effectively limit the individual's ability  
4                   to live in a family home or community living facil-  
5                   ity; and

6                   "(C) the individual's earnings (and value of em-  
7                   ployment-related medical benefits) are not sufficient to  
8                   allow him to provide for himself a reasonable equiva-  
9                   lent of the cash benefits (and medical assistance under  
10                  this title) which would be available to him in the ab-  
11                  sence of such earnings."

12           (e)   ELIGIBILITY OF DISABLED CHILD.—Section  
13   1902(e) of such Act, as amended by subsection (d), is further  
14   amended by adding at the end thereof the following new  
15   paragraph:

16           "(6) Whenever an individual is receiving benefits under  
17   title II as an adult disabled child (as provided in section  
18   202(d)(1)(B)(ii)), and but for those benefits would be eligible  
19   for supplemental security income benefits under title XVI or  
20   for a State supplementary payment, such individual shall be  
21   deemed, for purposes of this title only, to be receiving supple-  
22   mental security income benefits, or a State supplementary  
23   payment, respectively."

## 1 SEC. 10. RESPONSIBILITIES OF THE SECRETARY.

2 (a) ASSESSMENT.—Beginning with fiscal year 1987,  
3 the Secretary of Health and Human Services, after consulta-  
4 tion with the Secretary of Education, shall assess the status  
5 of disabled individuals in each State who are receiving or are  
6 entitled to receive services under any title of the Social Secu-  
7 rity Act, and shall report to the Congress not less often than  
8 every two years concerning the progress each State is  
9 making toward achieving the national goal of access to com-  
10 munity based services and appropriate living arrangements  
11 for all such individuals. The Secretary shall make a compre-  
12 hensive study, including evaluations of the impact of changes  
13 in Federal law on communities and on public and private  
14 entities. Such report shall include both fiscal and demograph-  
15 ic data, together with any recommendations for changes in  
16 Federal legislation. The Secretary shall submit a comprehen-  
17 sive report to the Congress not later than January 15, 1997.

18 (b) REGULATIONS.—Within 12 months after the date of  
19 the enactment of this Act, the Secretary of Health and  
20 Human Services shall issue a notice of proposed rulemaking  
21 with respect to all amendments to the Social Security Act  
22 made by this Act, and after allowing not less than 60 days  
23 for public comment, shall issue final regulations not later  
24 than 18 months after such date of enactment. Such regula-  
25 tions shall provide for the receipt and preliminary review by

1 the Secretary of implementation agreements proposed by any  
2 State beginning not later than June 30, 1987.

3 SEC. 11. EFFECTIVE DATE.

4 Except as otherwise provided, the amendments made by  
5 this Act shall apply in fiscal years beginning on or after Octo-  
6 ber 1, 1986.